

REMARKS/ARGUMENTS

This Amendment is being filed in response to the Office Action dated June 24, 2008. Reconsideration and allowance of the application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 2-6 and 12-22 are pending in the Application.

In the Office Action, claims 4-6 and 12-22 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 5,751,968 to Cohen ("Cohen") in view of U.S. Patent No. 6,493,758 to McLain ("McLain"). Claims 2-3 are rejected under 35 U.S.C. §103(a) as allegedly being obvious over Cohen in view of McLain in further view of U.S. Patent No. 6,405,256 to Lin ("Lin"). Claims 2-6 and 12-22 are rejected under 35 U.S.C. §103(a) as allegedly being obvious over McLain in view of U.S. Patent No. 6,005,563 to White ("White"). These rejections are respectfully traversed. It is respectfully submitted that claims 2-6 and 12-22 are allowable over Cohen in view of McLain alone and in view of Lin and further that claims 2-6 and 12-22 are allowable over McLain in view of White for at least the following reasons.

It is undisputed that Cohen or White fails to teach "that the XML file identifies multiple alternative files corresponding to a

given segment of the media presentation, the method further comprising selecting and retrieving one of the multiple alternative files ..." (See, Office Action, page 4, numbered paragraph 8, and page 7, numbered paragraph 19.) The Office Action relies in McLain for disclosing this feature, however, it is respectfully submitted that reliance on McLain is misplaced.

McLain shows a system for offline viewing of content with a mobile device. The sections of McLain cited in the Office Action for allegedly showing these features in fact merely describe common features of a networking environment (see, McLain, Col. 6, lines 65-66) including LAN, network interface and adapter (see, Col. 7, lines 1-5). While McLain does describe a downloading module (see, Col. 7 line 36 through Col. 8, line 17), the organization of files in McLain has nothing to do with the presently claimed methods and device. McLain describes that a file may be organized in a hierarchical manner (see, Col. 8, lines 6-12) and wherein user constraints on download size may limit the number of linked data portions of the hierarchy that are downloaded. However, as is readily appreciated, a hierarchical data structure such as discussed by McLain, has hierarchical portions that describe different parts of a presentation, not multiple alternative files

corresponding to a given segment of the media presentation as recited in the claims.

It is respectfully submitted that the method of claim 14 is not made obvious by the teachings of Cohen in view of McLain and McLain in view of White. For example, Cohen in view of McLain and McLain in view of White does not disclose or suggest, a method that amongst other patentable elements, comprises (illustrative emphasis added) "based on parsing of the control information file, the client device: identifying multiple alternative files corresponding to a given segment of the media presentation, determining which file of the multiple alterative files to retrieve based on system constraints; retrieving the determined file of the multiple alternative files to begin a media presentation ..." as recited in claim 14, and as similarly recited in each of claims 17 and 20. Lin is introduced for allegedly showing elements of the dependent claims and as such, does nothing to cure the deficiencies in each of Cohen in view of McLain and McLain in view of White.

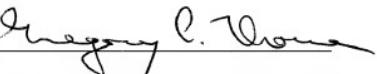
Based on the foregoing, the Applicant respectfully submits that independent claims 14, 17 and 20 are patentable over Cohen in view of McLain and McLain in view of White and notice to this effect is earnestly solicited. Claims 2-13, 15-16, 18-19 and 21-22

respectively depend from one of claims 14, 17 and 20 and accordingly are allowable for at least this reason as well as for the separately patentable elements contained in each of the claims. Accordingly, separate consideration of each of the dependent claims is respectfully requested.

In addition, Applicant denies any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicant reserves the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

Applicant has made a diligent and sincere effort to place this application in condition for immediate allowance and notice to this effect is earnestly solicited.

Respectfully submitted,

By: 

Gregory L. Thorne, Reg. 39,398
Attorney for Applicant(s)
September 23, 2008

THORNE & HALAJIAN, LLP
Applied Technology Center
111 West Main Street
Bay Shore, NY 11706
Tel: (631) 665-5139
Fax: (631) 665-5101